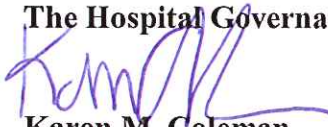




MEMORANDUM

TO: Juan Zapata, Chairman;
Susan Dechovitz, Vice-Chairwoman;
Honorable Members of
The Hospital Governance Taskforce

DATE: May 6, 2011

FROM: 
Karon M. Coleman
Assistant County Attorney

SUBJECT: Sunshine Law,
Public Records,
Sovereign Immunity &
Public Benefit Corporation

This memorandum is to provide a general framework of the Sunshine Law, the Public Records Act and Sovereign Immunity for the benefit of the Hospital Governance Taskforce as it considers various models of governance for the Public Health Trust and the Jackson Health System. It also explores Public Benefit Corporations.

I. SUNSHINE LAW AND PUBLIC RECORDS ACT¹

A. Public Hospitals. Public Hospitals are subject to the Sunshine Law and the Public Records Act. Section 395.3035, Fla. Stat. However, the following specific activities are exempt from the Sunshine Law and Public Records Act:

1. strategic plans (395.3035, Fla. Stat);
2. contract negotiations with nongovernmental entities (395.3035, Fla. Stat.);
3. managed care contracts (395.3035, Fla. Stat.), trade secrets (395.3035, Fla. Stat);
4. peer review (395.0193, Fla. Stat.);
5. medical review committee/quality evaluations (766.101, Fla. Stat);
6. risk management evaluation of claims and offers of compromise (768.28(16));
7. internal risk management programs (395.0197, Fla. Stat);
8. terrorism, security and emergency management (395.1056, Fla. Stat);
9. security system plans, 286.0113, Fla. Stat.

Several of these exemptions are of limited duration such as strategic planning which requires the transcript of the meeting to be made available to the public upon implementation of the strategic plan or three (3) years whichever is sooner. Others remain exempt without limitation such as peer review and risk management programs.

¹ For purposes of this discussion, reference to the Sunshine Law shall include both Article I, Section 24(b) of the Florida Constitution and Section 286.011 of Florida Statutes and the Public Records Act shall include both Article I, Section 24(a) of the Florida Constitution and Chapter 119 of Florida Statutes.

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B. Corporations Created by Government Pursuant to Statute. The Attorney General has opined that entities created pursuant to statute are subject to the Sunshine Law and Public Records Act. See Attorney General Opinions 92-80, 04-44, 98-55, 98-42, 05-27 and 92-53. This would most likely include corporations identified as public benefit corporations. Some of the statutes creating public benefit corporations include provisions specifying that the corporation will be subject to the Sunshine Law and Public Records. See Section 215.56005, Fla Stat. regarding Tobacco Settlement Financing Corporation; See generally Section III for discussion of Public Benefit Corporations.

C. Private Corporations that Lease Public Hospitals. According to Section 395.3036, Fla.Stat.², a private corporation that leases a public hospital is exempt from the Public Records Law and the Sunshine Law as long as the public lessor (the government) complies with the public finance accountability provisions of Section 155.40(5),F.S. with respect to the transfer of any public funds to the private corporation³ and at least three of the following five criteria:

1. the government was not the incorporator of the private corporation;
2. there is no commingling of funds between the government and the private corporation in any account maintained by either entity, except for payment of rent and administrative fees or the transfer of funds pursuant ;
3. the private entity does not participate in the decision-making for the government;
4. the lease agreement does not expressly require the private corporation to comply with the Sunshine Law and Public Records Law;
5. the government is not entitled to receive any revenues from the private entity (except rents or administrative fees) and the government is not responsible for debts or other obligations of the private corporation.

D. Other Models Using Private Corporations. For other models utilizing private corporations, it is necessary to apply the Supreme Court tests for determining if that private corporation is acting on behalf of the government for purposes of the Public Records Act and the Sunshine Law.

² Section 395.3036, Fla. Stat. was found to be a constitutionally permissible limitation on the Sunshine Law and Public Records law, but Section 155.40(6) & (7), Fla. Stat. (2004) -- which declared that the sale or lease of a public hospital was not be considered a transfer of government function and that the lessee was not be acting on behalf of the government -- was not constitutional. Baker County Press Inc. vs. Baker County Medical Services, 870 So. 2d 189 (1st DCA 2004), rev. den. 885 So. 2d 386 (Fla. 2004)

³ Section 154.40(5), Fla. Stat.: "In the event a hospital operated by a for-profit or not-for-profit Florida corporation receives annually more than \$100,000 in revenues from the county, district, or municipality that owns the hospital, the Florida corporation must be accountable to the county, district, or municipality with respect to the manner in which the funds are expended by either:

- (a) Having the revenues subject to annual appropriations by the county, district, or municipality; or
- (b) Where there is a contract to provide revenues to the hospital, the term of which is longer than 12 months, the governing board of the county, district, or municipality must be able to modify the contract upon 12 months notice to the hospital."

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1. The Public Records Act. There are two tests that can be applied to determine if the Public Records Act applies to a private entity. The first test is the delegation test: if a public entity delegates a statutorily authorized function to a private entity, any records generated by the private entity's performance of that duty becomes a public record. Memorial Hospital-West Volusia, Inc. v. News-Journal Corp., 729 So. 2d 373, 381 (Fla. 1999); Memorial Hospital-West Volusia Inc. v. News-Journal Corp., 927 So. 2d 961, 966 (5th DCA 2006).

If the delegation of statutory responsibilities is not so obvious, the Supreme Court requires that the matter be analyzed under totality of factors test. News and Sun-Sentinel Co. v. Schwab, Twitty & Hanser Architectural Group, Inc. 596 So. 1029, 1031 (Fla. 1992). In order to determine if a private entity is acting on behalf of government for purposes of the Public Records Act, the following factors are to be considered:

- a. the level of public funding;
- b. commingling of funds;
- c. whether the activity is conducted on publicly owned property;
- d. whether services contracted for are an integral part of the public agency's chose decision-making process;
- e. whether the private entity is performing a governmental function or a function which the public agency would otherwise perform;
- f. the extent of the public agency's involvement with, regulation of, or control over the private entity;
- g. whether the private entity was created by the public agency;
- h. whether the public agency has a substantial financial interest in the private entity; and
- i. for who's benefit is the private entity functioning.

News and Sun-Sentinel Co. v. Schwab, Twitty & Hanser Architectural Group, Inc. 596 So. 2d at 1031. If the combined factual findings regarding the nine (9) factors show that the private entity is acting on behalf of the public entity, then the Public Records Act applies. The Supreme Court has specifically encouraged private entities to review the Schwab factors to determine if they are acting on behalf of the government for purposes of the Public Records Act. Memorial Hospital-West Volusia, Inc. v. News-Journal Corp., 729 So. 2d at 380.

2. Sunshine Law. A private entity is subject to the provisions of the Sunshine Law if a public entity delegates the performance of all or a portion of its public purpose to that private entity. Memorial Hospital-West Volusia, Inc. v. News-Journal Corp., 729 So. 2d at 383; Town of Palm Beach v. Gradison, 296 So. 2d 473 (Fla. 1974). The Fifth District Court of Appeals applied the totality of factors test (used for Public Records Act) to determine whether or not the Sunshine Law applied to a private entity that purchased a public hospital. See Memorial Hospital-West Volusia Inc. v. News-Journal Corp., 927 So. 2d 961, 966 (5th DCA 2006). Also, the Attorney General has opined that receipt of Medicare, Medicaid, government grants or loans by a private hospital does not subject that hospital to the Sunshine Law. AGO 80-45.

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E. Public Hospital/Private Corporation Cases. There is an interesting historical interplay between the Florida Legislature and the Florida courts regarding the applicability of the Sunshine Law and Public Records Law to private corporations which lease, operate or purchase public hospitals. The courts were inclined to find that these open government laws applied, while the Legislature kept attempting to exclude these transactions from the Sunshine Law and the Public Records Act. When the Legislature created Section 395.3036, Fla. Stat. (the exemption for private corporations leasing public hospitals), it made the following findings:

Public entities have chosen to privatize the operations of their public hospitals and public health care facilities in order to alleviate three problems that pose a significant threat to the continued viability of Florida's public hospitals:

- (a) A financial drain on the facilities from their forced participation in the Florida Retirement System;
- (b) *The competitive disadvantage placed on these facilities vis a vis their private competitors resulting from their required compliance with the state's public records and public meetings laws;* and
- (c) State constitutional restrictions on public facility participation in partnerships with private corporations as a result of the limitations contained in the State Constitution....

Baker County Press, Inc. v. Baker County Medical Services, Inc., 870 So. 2d 189, 194-95 (1st DCA 2004) quoting Chapter 98-330, Sec. 2 at 2846-47, Laws of Florida (emphasis added).

To learn more about the policy and legal arguments regarding the applicability of the Sunshine Law and the Public Records Act to the sale or lease of public hospitals to private corporations, the following cases are recommended: Sarasota Herald-Tribune Co. v. Community Health Corp., 582 So. 2d 730 (2nd DCA 1991); Memorial Hospital-West Volusia Inc. v. News-Journal Corp., 729 So. 2d 373 (Fla. 1999); Indian River County Hosp. District v. Indian River Memorial Hosp., 766 So. 2d 233 (4th DCA 2000); Baker County Press, Inc. v. Baker County Medical Center, 870 So. 2d 189 (1st DCA 2004); Memorial Hospital-West Volusia Inc. v. News-Journal Corp., 927 So. 2d 961 (5th DCA 2006).

II. SOVEREIGN IMMUNITY

A. In General. Sovereign immunity prohibits/restricts tort suits against the government; government cannot be sued without its consent. According to Article X, Section 13 of the Florida Constitution of Florida Constitution: "Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating."

The legislature waived sovereign immunity on a limited basis⁴ for state and political subdivisions through enactment of section 768.28 of Florida Statutes. According to 768.28 of Florida Statutes:

(1) In accordance with s. 13, Art. X of the State Constitution, the state, for itself and for its agencies or subdivisions, hereby waives sovereign immunity for liability for torts, but only to the extent specified in this act. Actions at law against the state or any of its agencies or subdivisions to recover damages in tort for money damages against the state or its agencies or subdivisions for injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of the employee's office or employment under circumstances in which the state or such agency or subdivision, if a private person, would be liable to the claimant, in accordance with the general laws of this state, may be prosecuted subject to the limitations specified in this act....

* * *

(9)(a) No officer, employee, or agent of the state or of any of its subdivisions shall be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property....

B. State Agencies and Subdivisions. Section 768.28(2) of Florida Statutes defines "state agencies or subdivisions" as "the executive departments, the Legislature, the judicial branch (including public defenders), and the independent establishments of the state, including state university boards of trustees; counties and municipalities; and *corporations primarily acting as instrumentalities or agencies of the state, counties, or municipalities*, including the Florida Space Authority." (emphasis added).

⁴ \$100,000 for a claim/judgment by one person (increases to \$200,000 on October 1, 2011); \$200,000 totaling all claims arising from same incident (increases to \$200,000 on October 1, 2011). Special Claims Bill must be approved by Legislature for any amount beyond these caps

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C. The Public Health Trust. The Third District Court of Appeals found that the Public Health Trust was a state agency pursuant to the definition in Section 768.28 of Florida Statute. Jaar v. University of Miami, 474 So. 2d 239 (3d DCA 1985).

D. Special Taxing District. The Supreme Court concluded that a hospital special taxing district is an independent establishment of the state for purposes of Section 768.28, Fla. Stat. Eldred v. North Broward Hospital District, 498 So. 2d 911, 912 (Fla. 1986).

E. Public Benefit Corporation. There is a strong likelihood that a public benefit corporation would be found to meet the definition of “corporations primarily acting as instrumentalities or agencies of the state, counties or municipalities” in Section 768.28, Fla. Stat.

The case of Prison Rehabilitative Industries and Diversified Enterprises, Inc. v. Betterson, 648 So. 2d 778 (1st DCA 1995) involved a not for profit organization that was mandated by state statute, s. 946.502 Fla. Stat., for the purposes of creating occupational training and other opportunities for inmates. The court held that PRIDE was an agency and instrumentality of the state for purposes of the sovereign immunity statute because the corporation was subject to a number of statutory mandates with regard to its operations –such as who it could contract with and who it could sell its products to – as well as needing approval from the governor regarding its article of incorporation, being subject to state audits, receiving operational funding from the state and being subject to reversion of property to the state if it ceased to exist.

While this state-mandated not for profit corporation is not identified as a public benefit corporation in its enabling statute, it is mostly likely that the analysis for a public benefit corporation would be similar.

F. Corporation Acting as an Instrumentality or Agency.

1. An Issue of Fact. Whether a corporation is acting as an instrumentality or agency of the state, county or municipality is an issue of fact for a judge or jury. Metropolitan Dade County v. Glaser, 1999 WL 89427 (3d DCA 1999).

2. A Matter of Control. Generally, the analysis of whether a corporation is an instrumentality or agency of government centers on the issue of control: the more control that a governmental entity has over the corporation, the more likely the corporation will be found to be an agency and instrumentality of that governmental entity.

a. The control must be more than just control over the outcome, it must be control over the means to achieve that outcome. Dorse v. Armstrong World Industries, Inc., 513 So. 1265, 1268 n.4 (Fla. 1987).

b. Government must be able to control day to day operations. Shands Teaching Hospital and Clinics, Inc. v. Lee, 478 So. 2d 77 (1st DCA 1985).

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c. The corporation must be subject to something more than the sort of control that is exercised by the government in its regulatory capacity. U.S. v. Orleans, 425 US 807 (1976).

d. Control that flows from a simple contractual arrangement between a governmental entity and a corporation ordinarily will not be sufficient to establish that the contracting corporation is an instrumentality or agency of the state. Mingo v. ARA Health Services, 638 So. 2d 85 (2nd DCA 1994).

e. Mere fact that corporation is created by the government will not necessarily establish that corporation is a government agency or instrumentality. Doe v. Am. Red Cross, 727 F. Supp 186 (E.D. 1989).

f. An independent contractor is not an agent and therefore “cannot share in the full panorama of the government’s immunity.” Dorse v. Armstrong World Industries, Inc., 513 So. 1265, 1268 (Fla. 1987).

3. A Few Examples.

a. Pagan v. Sarasota County Public Hosp. Bd., 884 So. 2d 257 (2d DCA 2004) This case provides a good example of a factual finding that a not for profit corporation was an agency and instrumentality of a local government. The Second District Court of Appeals concluded that a not for profit physician’s group created by the Sarasota County Public Hospital Board was an agency and instrumentality of the Hospital District Board because the Board had an undeniable right to control the operations of the not for profit physician’s group. To wit: the Hospital Board created the not for profit; it had the authority to dissolve it and have its assets revert to the Hospital Board; it elected the not for profit’s board members, which included a majority of Hospital Board members; the Hospital District Chief Executive Officer served as the President of the not for profit; and Hospital Board funds were used to create and operate the not for profit.

b. Shands Teaching Hospital and Clinics, Inc. v. Lee, 478 So. 2d 77 (1st DCA 1985). Legislature authorized the lease of Shands Teaching Hospital to a private non-profit corporation organized for the purpose of operating the hospital and other health care facilities. Court concluded that intent of the Legislature was to treat Shands as an autonomous, self-sufficient entity, and not as an instrumentality acting on behalf of state. Additionally, court found that the day to day operations of Shands were not under the direct control of the state and therefore Shands was not an instrumentality of the state for purposes of sovereign immunity.

c. Metropolitan Dade County v. Glaser, 1999 WL 89427 (3d DCA 1999). The County provided operating funds and oversaw expenditures for a public housing tenants’ advisory council, but had no control or input into any of the organization’s operations or actions, and did not control the outcome of the organizations activities nor the means used to achieve organization’s goals; therefore, the County did not have an agency relationship with the organization.

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d. Skoblow v. Ameri-Manage, Inc. 483 So. 2d 809 (3d DCA 1986). State entered into a contractual relationship with Ameri-Manage to provide direct management services for South Florida State Hospital, coordinate the development of a long-range plan for the hospital consistent with legislative mandate and assist the state in planning for forensic services. Court concluded that an examination of the relationship was dispositive that Ameri-Manage was operating as an agency of the state.

e. Mingo v. ARA Health Services, Inc. 638 So. 2d 85 (2d DCA 1994). County entered into contract with ARA Health Services to provide medical services to inmates. Based on the plain language of the contract -- which stated that company was providing services as an independent contractor and was not to be considered an agent, employee, partner nor joint venturer of the County -- company was not an instrumentality or agent of County for purposes of sovereign immunity.

G. Language of s. 155.40, Fla. Stat. Whereas the language in the sovereign immunity statute indicates that a corporation must be “primarily acting as instrumentalities or agencies of the state, counties, or municipalities,” the language in Section 155.40, Fla. Stat. emphasizes that a corporation that leases or purchases a public hospital should not be considered to be “acting on behalf of” a governmental entity. Section 155.40(7), Fla. Stat. states: “The lessee of a hospital, under this section or any special act of the Legislature, operating under a lease shall not be construed to be ‘*acting on behalf of*’ the lessor as that term is used in statute, unless the lease document expressly provides to the contrary.” (emphasis added). Also, Section 155.40(8(b) states:

A complete sale of a hospital as described in this subsection shall not be construed as:

1. A transfer of a governmental function from the county, district, or municipality to the private corporation or other private entity purchaser;
2. Constituting a financial interest of the public agency in the private corporation or other private entity purchaser;
3. *Making the private corporation or other private entity purchaser an “agency” as that term is used in statutes;*
4. Making the private corporation or other private entity purchaser an integral part of the public agency’s decisionmaking process; or
5. *Indicating that the private corporation or other private entity purchaser is “acting on behalf of a public agency” as that term is used in statute.*

(Emphasis added). And while it appears the Legislature included this language to avoid the application of the Sunshine Law and Public Records Act to corporations that lease or purchase public hospitals, it also has the impact of distancing these corporations from the sovereign immunity statute as well.

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The Attorney General has opined twice on whether or not the sovereign immunity statute applies when a public hospital is leased to a private corporation pursuant to Section 155.40, Fla. Stat. In both instances, the Attorney General found that the sovereign immunity statute applied. In the first opinion, the Southeast Volusia Hospital District had formed a not-for profit organization for purposes of operating hospitals and other health care facilities. The District was the sole member of the corporation and the membership of the District Board served as the membership of the Bert Fish Medical Center Inc. Board. Furthermore, the lease agreement indicated that there was intended to be a "transfer of government function" from the District to the corporation, and the corporation was considered to be "acting on behalf of " the district." AGO 05-24.

In the second opinion, the Attorney General also found that Citrus County Hospital Board, a special hospital district, created the Citrus Memorial Health Foundation, Inc, a not for profit corporation, for the purposes of carrying out the responsibilities of the Board. Again, the lease intended to transfer the government function from the Board to the corporation and corporation was to be considered to be acting on behalf of the Board when fulfilling its obligations under the lease. Furthermore, the Board was the sole member of the corporation, the Board appropriated funds to the corporation for the purpose of providing medical care to the residents of the County, in the event of dissolution the assets would revert to the Board and the members of the Board also served as members of the board for the corporation. The Attorney General concluded that the Citrus Memorial Health Foundation Inc was acting primarily as an instrumentality of the Board for purposes of the sovereign immunity statute. AGO 06-36.

In both these cases, the facts supported a finding that the governmental entities exercised sufficient control over the not for profit organizations to support a finding that the corporations were primarily acting as an instrumentality or agent; similar to the Pagan v. Sarasota County Public Hospital case.

H. **Shands Sovereign Immunity Bill.** SB 626. This bill amends Section 1004.41 of Florida Statutes, "University of Florida; J. Hillis Miller Health Center" to recognize Shands Teaching Hospital and Clinics, Inc., Shands Jacksonville Medical Center Inc, Shands Jacksonville Health Care Inc. and any not for profit subsidiary of these corporations as instrumentalities of the state for purposes of sovereign immunity (768.28(2), F.S.). Therefore, while interesting, this bill would not apply to Miami-Dade County, the Public Health Trust or any not for profit that leased the Jackson Health System.

III. PUBLIC BENEFIT CORPORATION

There is no particular statute outlining the particulars of a public benefit corporation. However, disbursed throughout the Florida Statutes are several examples of Florida public benefit corporations. Each one appears distinct in terms of its authority, powers, duties, restrictions and limitations, but they all seem to have something to do with financing. Here are some examples:

A. Florida Water Pollution Control Financing Corporation. Section 403.1837, Fla. Stat.. "Florida Water Pollution Control Financing Corporation is created as a nonprofit public-benefit corporation for the purpose of financing or refinancing the costs of projects and activities described in [various statutes]. The projects and activities described in those sections constitute a public governmental purpose; are necessary for the health, safety and welfare of all residents; and include legislatively approved fixed capital outlay projects. Fulfilling the purposes of the corporation promotes the health, safety and welfare of the people of the state and services essential governmental functions and is of paramount public purpose. "

B. Inland Protection Financing Corporation. Section 376.3071, Fla. Stat. "...[I]tis hereby determined to be in the best interest of, and necessary for the protection of the public health, safety and general welfare of the residents of this state, and therefore of paramount public purpose, to provide for the creation of a nonprofit public benefit corporation as an instrumentality of the state to assist in financing the functions provided in [various statutes] and to authorize the department to enter into one or more service contracts with such corporation for the provision of financing services related to such function and to make payments thereunder from the amount on deposit in the Inland Protection Trust Fund, subject to annual appropriations by the Legislature."

C. Tobacco Settlement Financing Corporation. Section 215.56005, Fla. Stat. "The Tobacco Settlement Financing Corporation is hereby created as a special purpose, not-for-profit, public benefits corporation, for the purpose of purchasing any or all of the state's right, title, and interest in and to the tobacco settlement agreement and issuing bonds to pay the purchase price therefor which shall be used to provide funding for the Lawton Chiles Endowment Fund. The corporation is authorized to purchase any or all of the state's right, title, and interest in and to the tobacco settlement agreement and to issue bonds to pay the purchase price therefor. The proceeds derived by the state from the sale of any or all of the state's right, title, and interest in and to the tobacco settlement agreement shall be used to fund the Lawton Chiles Endowment Fund. The fulfillment of the purposes of the corporation promotes the health, safety, and general welfare of the people of this state and serves essential governmental functions and a paramount public purpose." Statute specifically makes the corporation subject to Sunshine Law and Public Records Act.

D. Florida Hurricane Catastrophe Fund Finance Corporation. Section 215.555(6)(d), Fla. Stat. "In addition to the findings and declarations in subsection (1), the Legislature also finds and declares that: a. The public benefits corporation created under this paragraph will provide a mechanism necessary for the cost-effective and efficient issuance of bonds. This mechanism will eliminate unnecessary costs in the bond issuance process, thereby increasing the amounts available to pay reimbursement for losses to property sustained as a result of hurricane

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damage.; b. The purpose of such bonds is to fund reimbursements through the Florida Hurricane Catastrophe Fund to pay for the costs of construction, reconstruction, repair, restoration, and other costs associated with damage to properties of policyholders of covered policies due to the occurrence of a hurricane; c. The efficacy of the financing mechanism will be enhanced by the corporation's ownership of the assessments, by the insulation of the assessments from possible bankruptcy proceedings, and by covenants of the state with the corporation's bondholders. 2.a. There is created a public benefits corporation, which is an instrumentality of the state, to be known as the Florida Hurricane Catastrophe Fund Finance corporation."

E. Other State-Created Corporations. There are other corporations that are created by the state that are not specifically designated public benefit corporations. Again, here are a few examples:

1. Prison Rehabilitative Industries and Diversified Enterprises, Inc. described in Prison Rehabilitative Industries and Diversified Enterprises, Inc. v. Betterson, 648 So. 2d 778 (1st DCA 1995) and created pursuant to Section 946.502 of Florida Statutes (discussed above in II(E)).

2. Work Force Florida Inc.. Created by Section 445.004, Fla. Stat. to be the principal workforce policy organization for the state. Specifically includes a provision to comply with Sunshine Law and Public Records Act.

3. Scripps Florida Funding Corporation. Section 288.955, Fla. Stat. "The corporation shall be organized to receive, hold, invest, administer, and disburse funds appropriated by the Legislature for the establishment and operation of a state-of-the-art biomedical research institution and campus in this state by The Scripps Research Institute. The corporation shall safeguard the state's commitment of financial support by ensuring that, as a condition for the receipt of these funds, the grantee meets its contractual obligations. In this manner, the corporation shall facilitate and oversee the state goal and public purpose of providing financial support for the institution and campus in order to expand the amount and prominence of biomedical research conducted in this state, provide an inducement for high-technology businesses to locate in this state, create educational opportunities through access to and partnerships with the institution, and promote improved health care through the scientific outcomes of the institution" Specifically includes a provision to comply with Sunshine Law and Public Records Act.

F. Expressway Authorities and Transportation Authorities. These entities were considered instrumentalities of the state pursuant to the various statutes in Chapters 343 and 348 of Florida Statutes.

IV. Conclusion

The characteristics that would tend to support the finding that a corporation is acting primarily as an instrumentality or agency of the state, county or municipality – control of the corporation by the governmental entity – for purposes of sovereign immunity tend to also be the same characteristics that would support the conclusion that the corporation is acting on behalf of the state, county or municipality for purposes of the Sunshine Law and the Public Records Act.

Similarly, if a corporation is acting independently enough to be found not to fall within the auspices of the Sunshine Law and the Public Records Act, it is likely to also be found that the corporation is sufficiently separate from government and not to privy to the protections of the sovereign immunity statute.

Also, it seems likely that a public benefit corporation or other statutorily-mandated not for profit corporation would fall within the ambit of the Sunshine Law, Public Records Act and the Sovereign Immunity Statute. However, for other corporations with a contractual relationship with the governmental entity, it would depend on whether or not the corporation was acting on the governmental entity's behalf and the level of control exercised by the governmental entity over the corporation.